No. 4111

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

QUAN YUEI QUONG,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

BRIEF FOR APPELLANT.

ALFRED L. WORLEY,
LOUIS GOLDBERG,
Attorneys for Appellant.

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Statement of the Case.

This is an appeal by Quan Yuei Quong from an order of the Southern Division of the United States District Court for the Northern District of California dismissing a writ of habeas corpus issued by the said Court in behalf of the said Quan Yuei Quong, and remanding him to the custody of the appellee herein, Edward White, Commissioner of Immigration for the Port of San Francisco.

The record in the case shows that the appellant arrived at the Port of San Francisco from China on October 14, 1921, accompanied by Quan Yuei Len, his brother, (the appellant in case No. 4110,

now pending in this Court) and made application to the appellee herein, as Commissioner of Immigration of the said port, for admission into the United States as a minor son of Quan Sing, a Chinese merchant resident and engaged in business in Los Angeles, California; that evidence was submitted to the said Commissioner in support of the said application of the appellant for admission, both white and Chinese witnesses appearing and testifying before the Immigration officers acting under the said Commissioner, but that the appellant was denied admission by the said Commissioner; that an appeal was taken in behalf of said appellant to the Secretary of Labor, from the order and decision of the said Commissioner denying the appellant admission, and that the appeal so taken was dismissed by the Assistant Secretary of Labor and the appellant held for deportation to China; that while so held at the Immigration Station at Angel Island, California, awaiting deportation, a petition for a writ of habeas corpus, alleging among other matters unfairness of hearing, abuse of discretion and errors and mistakes of law on the part of the executive officers, was filed in behalf of the appellant in the United States District Court for the Northern District of California. A demurrer to the petition interposed by the United States Attorney, representing the appellee herein, was overruled, and a writ of habeas corpus issued. The appellee in due course made his return to the writ, making the entire immigration record of the hear-

ing accorded the appellant in the matter of his application for admission, which had been previously filed as an exhibit in the case, a part of the return "with the same full force and effect as if set out in full" therein. (Trans. page 18.) In the petition for the writ it was alleged as follows:

> "Your petitioner has not in his possession, nor under his control, a copy of the hearings or proceedings hereinbefore mentioned. Your petitioner alleges, however, that he has set forth herein the basic facts upon which the prayer for relief is made, but however, should the respondent desire to produce the immigration records appertaining to the case of the said detained, your petitioner stipulates, that upon their production, the said records may be considered with the same force and effect as if filed with this petition and as exhibits in support and in explanation thereof." (Trans. pages 7 and 8.)

The Immigration Record is part of the record on appeal. (See stipulation and order respecting same. Trans. pages 31 and 32.)

It was alleged in the petition that the appellant's father, Quan Sing, had employed an attorney of San Francisco, A. P. Entenza, to present certain new evidence to the Secretary of Labor, and to seek a reopening of the appellant's case before the Secretary of Labor. It appears from the Immigration Record (page 104) that the attorney mentioned communicated by telegraph with E. J. Henning, the Assistant Secretary of Labor, respecting the case of the appellant, and received in reply from

the Assistant Secretary a telegram reading as follows:

> "Answering telegrams Quan cases Department's investigation of mercantile firm at Los Angeles sole basis for decision and facts presented cannot be overcome by testimony (stop) Determining factors are large number of partners for a very small business. Regret record does not justify reopening case." (Immigration Record, page 105.)

Particular attention is called to this telegram as showing what the Assistant Secretary himself upon whose order the appellant was held for deportation, regarded as the controlling and determinative reason for the dismissal of the appeal taken from the Commissioner's adverse decision.

It appears further from the record that while the habeas corpus proceedings were pending affidavits setting forth new evidence were presented to the Secretary, and an application for a reopening of the case was made, but that the said application was denied.

The so-called Board of Review of the Department of Labor, upon whose adverse recommendation the application for reopening was denied, specified its reasons for recommending the denial of the application in a memorandum opinion which we quote in full, as follows:

> "In re Quon Shue Fun, Quan Yuei Len and Quon Yuei Quong.

These cases came before the Board of Review to consider request for reopening and to hear new evidence.

Roger O'Donnell attorney. No oral hearing.

This is the case of three Chinese aliens who applied for admission to the country as being the sons of two alleged merchants of the same firm. On March 22, 1922, this Board recommended, and the Department ordered, that the excluding decision be affirmed. The case having been reviewed at that time and the reasons for exclusion stated, there is no occasion for the review of that phase of the case.

There are now presented two affidavits, one: 'In re: Quon Quei Len and Quan Yuei Quong', minor sons of a merchant, and another, 'In re: Quon Shue Fun', minor son of a merchant. The substance of both affidavits which are signed by a number of persons, is that the undersigned are citizens of the United States and residents of Los Angeles, California, not Chinese; that each is well acquainted with the Chinese merchants named at the tops of the respective affidavits, alleged fathers of the minor sons (son) respectively; that the said firm of which they are members has engaged in the buying and selling of goods in Los Angeles; that the said Chinese are merchants of the community and have performed no manual labor for the past two years except such as is necessary and required in the conduct of the business; that each affiant is informed that the Chinese merchants in question have lawful sons (son) applying for admission as the sons (son) of merchants, and that the purpose of the affidavit is to benefit the said Chinese as bona fide merchants of the city and state named.

It will be noted that the affidavits contained no statement that the affiants are willing to appear before the officers of the Immigration

Service and testify as to their knowledge of the firm and its membership; that there is no statement in the affidavits as to the business of the affiants or their relations with the alleged Chinese merchants from which the Department could conclude the probability that the affiants are in a position to testify as to the mercantile status of the Chinese in question, and that there is no statement in the affidavits as to why these witnesses were not introduced by the alleged merchants at the prior investigation, and nothing to show that the testimony of these affidavits will be anything more than cumulative to the testimony already had in the case and upon which the Department has held that the fathers in these cases have no mercantile status.

It is noted, however, that the attorney states in his transmitting letter that two of the witnesses are police officers of Los Angeles and that one of the white witnesses describes the firm as one of the biggest firms in Chinatown.

The Board of Review is of the opinion that the affidavits lacking so many averments as pointed out above, and a request for reopening which attorney bases on certain facts stated in his letter but not incorporated in his affidavits are not sufficient grounds to justify a reopening and consequent delay in the cases, as a practice of reopening cases on such a showing would, of course, result in an interminable consideration of the cases. It is therefore recommended that the application for reopening be denied." (Immigration Record, pages 114 and 115.)

This recommendation was approved by the Assistant Secretary, E. J. Henning.

Counsel will not attempt to review in detail in this brief the evidence submitted to the Immigra-

tion authorities to establish the rights of the appellant to admission. The Immigration Record is before this Court. It is very voluminous, which fact, it appears to counsel, is due largely to the prolixity of Immigration Inspector J. C. Nardini, who conducted the investigation of the case and examined the witnesses at Los Angeles, the city in which the appellant's father's mercantile business is located, and where the witnesses resided. The unfair attitude of this Inspector toward this case, which had been entrusted to him for impartial hearing, can be judged from his report found on pages 67 to 73 of the Immigration Record, which report seems to have been adopted by the Examining Inspector Hans A. M. Jacobsen of the Angel Island Immigration Station, who examined the appellant and his brother, and by the officers of the Department of Labor at Washington. (See Report of Acting Commissioner-General of Immigration Wixon, pages 95 to 98, Immigration Record.)

Referring to the place of business of the appellant's father, Inspector Nardini uses the following language in his report:

> "It seems that some air of mystery has pervaded this place ever since I have been in this city, and while applications of alleged members of the firm *have invariably been approved,* I am not satisfied that the partnership list is a bona fide one, nor do I believe from this investigation and the testimony, that Quan Sing is and has been a bona fide member of that firm for the statutory period." (Immigration Record, page 68.) (The italics are ours.)

As was said by appellant's counsel before the Department of Labor in his brief:

> "The prejudicial and gruelling examination and cross-examinations to which the father and his witnesses were subjected is self-evident from the testimony itself." (Immigration Record, page 93.)

Without attempting a detailed review of the testimony submitted to the Immigration Department, counsel would submit that the Immigration Record clearly establishes the fact that the appellant and Quan Yuei Len (appellant in case Number 4110, now pending in this Court) are lawful minor sons of Quan Sing, and that Quan Sing is a lawful resident of the United States, having been such since 1881, and is a merchant engaged in business in Los Angeles, California, as an active partner in the mercantile firm of Quan Tsue Lung Company, which firm is engaged in dealing in general Chinese merchandise. The evidence submitted to the Immigration authorities shows that the firm has thirteen partners, all of them active in business, the manager being Quan Hay, and that the business transacted appears to aggregate about $30,000 per annum, much of it being done on a credit basis and involving shipments of goods to Chinese in the country, on ranches and the like. It is further submitted that the Immigration Record shows that the firm has on hand a stock of merchandise worth from ten to thirteen thousand dollars; that it has over ten thousand dollars in accounts receivable; that no gam-

bling or other improper activities such as are regarded by the Immigration authorities as impairing the purely mercantile character of some Chinese firms, take place there; that Quan Sing does nothing but attend to the firm's business in the capacity of a partner therein, his specific duties as such being those of salesman and general helper. In this connection we would quote from the brief of appellant's counsel before the Department of Labor as follows:

> "It is shown throughout the record that the duties of Quan Sing as a partner are those of a salesman inside and outside the store; he is not the bookkeeper or manager and has nothing to do with the bookkeeping or management of the business; yet the examining inspector carps and criticises because Quan Sing does not have knowledge of details of the firm's business which are peculiarly within the knowledge of the manager, or bookkeeper, or both. Such a test applied to any member of any Chinese firm, located anywhere would absolutely disqualify every member except the manager himself. That is precisely what Inspector Nardini is trying to do in this case, and he admits it on pages 3 and 4 of his summary and asserts that Quan Hay is, *in his opinion,* the sole proprietor of the place.
>
> In reaching the last-named conclusion, Inspector Nardini advances nothing to show how or why Quan Sing would remain in this place for almost four years, pursuing no other occupation than that of merchandising. The existence of this situation is in itself sufficient to counteract the assertion that the status of Quan Sing is colorably acquired; the partnership records and the testimony of the father, the

> manager, and the bookkeeper supply the necessary corroboration of the genuineness of the father's partnership activity." (Immigration Record, page 92.)

Inspector Nardini in his report comments on the size of the quarters occupied by the appellant's fathers' firm, as follows:

> "The storeroom is about fifteen by thirty feet, and the only counter in the store is nine feet long, by actual measurement, two feet wide and two feet from the wall." (Immigration Record, page 69.)

The Inspector further states in his report:

> "Outside of the office there is a stairway leading to the balcony and second floor, where seven or eight beds were seen, and there were several escapes leading to the roof. In the rear there is a kitchen, and to the right of the kitchen is a large room facing on another street, containing eight or ten beds. An avenue of escape from the store is also afforded in connection with this room. While it is expected that lottery and other gambling operations are carried on there it has never been possible to establish this, but the place is an ideal one for an escape and detection in case of emergency." (Immigration Record, page 68.)

The Immigration record shows that three witnesses other than Chinese testified as to Quan Sing's mercantile status and that they were subjected to a very severe examination to say the least, the character of their examination being commented upon by the appellant's counsel before the Department in his brief. (See Immigration Record, page 92.)

So much for the mercantile status of Quan Sing. The other issue in the case before the Immigration Department was the relationship between him and the appellant. This relationship was, we submit, amply established by the testimony adduced, but was not considered satisfactorily established by the Commissioner of Immigration. The appeal taken to the Secretary of Labor was dismissed at first apparently solely on the theory that the mercantile status of Quan Sing was not considered established, the issue of relationship not being therefore considered, but after the habeas corpus proceedings were instituted the case was referred to the Department again for a decision on the relationship feature, and the Board of Review, whose findings and recommendation were approved and confirmed by the Second Assistant Secretary, disposed of the relationship issue very summarily in the following language:

> "The board of Review in view of the discrepancies, which are pointed out in the memorandum of February 27, 1922, is of the opinion that there is considerable doubt that applicants are the sons of the alleged fathers". (Immigration Record, page 126.)

The language just quoted would seem to counsel to indicate an inclination to dispose of the relationship feature of the case as summarily as possible, and notwithstanding the final recommendation of the Board of Review (approved by Second Assistant Secretary Robe Carl White) that the excluding

decision be affirmed on the ground that the applicants have neither established that they are the sons of the alleged fathers or that the alleged fathers are merchants", it is submitted by counsel that the Immigration Record would indicate that the controlling and determinative ground of the adverse action of the department is that referred to in Asssistant Secretary Henning's telegram, previously quoted herein, the other matters referred to in the various reports and memoranda of the department officials being more or less incidental.

Before concluding this statement of the case, counsel would refer to the fact that none of the testimony adduced before the Immigration authorities was contradicted. No witnesses were submitted by the Immigration authorities to controvert or offset the case made out by the appellant, and the testimony of the witnesses produced by him stands absolutely uncontradicted.

Some time after the supplemental proceedings had in the Department of Labor were concluded the District Court made and entered its order dismissing the writ of habeas corpus which had been issued in the matter, the order being in the following language:

> "This is one of those cases in which the bureau having found the facts against the applicant, such finding is conclusive on the Court, as the finding is not without support. The writ of habeas corpus heretofore issued is

dismissed and the petitioner remanded". (Trans. page 22.)

It is contended and submitted that the Immigration record of the hearing accorded the appellant shows on its face that the hearing accorded the appellant by the Immigration authorities was not a fair hearing, and that they acted arbitrarily and abused the discretion vested in them by law, to the detriment of the substantial rights of the appellant. The particulars and respects in which it is contended the unfairness and abuse of discretion consist will be pointed out later in this brief.

Specification of Errors.

The errors relied upon by the appellant are as follows:

First: That the Court erred in dismissing the writ of habeas corpus issued herein and in remanding the appellant.

Second: That the Court erred in not holding that the appellant, Quan Yuei Quong, had not been given, but had been refused and denied, a fair hearing in good faith by the Commissioner of Immigration of the port of San Francisco and by the Secretary of Labor of the United States.

Third: That the Court erred in holding that the Secretary of Labor having found the facts

against the appellant on his application before the Immigration Department to enter the United States, such finding is not without support in the evidence and is and was conclusive on the Court.

Fourth: That the Court erred in not holding that the appellant, Quan Yuei Quong, was entitled to enter the United States as a minor son of a Chinese merchant lawfully domiciled and resident therein.

Fifth: That the Court erred in holding that the Secretary of Labor and the Commissioner of Immigration of the port of San Francisco had accorded the appellant, Quan Yuei Quong, a fair hearing in the matter of his application to enter the United States as a minor son of a Chinese merchant lawfully domiciled and resident therein.

Sixth: That the Court erred in not holding that the Commissioner of Immigration and the Secretary of Labor had abused the discretion vested in them in the conduct and in the course of the hearing of the application of the appellant, Quan Yuei Quong, to enter the United States as a minor son of a Chinese merchant lawfully domiciled and resident in the United States.

Seventh: That the Court erred in not discharging the appellant, Quan Yuei Quong, from custody and in not permitting him to enter the United States as a minor son of a Chinese merchant lawfully domiciled and resident therein.

Brief of the Argument.

The Courts have decided time and time again that where the hearing accorded an alien seeking admission into the United States is unfair, or where the action of the immigration officers is arbitrary or abuse of discretion vested in them is shown, or where the immigration officers base their action on an erroneous construction or interpretation of the law, their decision adverse to the alien is not final, but may be reviewed by the Courts. This principle seems to be so elementary in this class of cases that citation of authority upon it is really unnecessary.

Chin Yow v. United States, 208 U. S. 8, 28 Sup. Ct. 201;

Kaneda v. United States, 278 Fed. 694.

It is contended upon behalf of the appellant:

First: That the Assistant Secretary of Labor based his action upon an erroneous construction of the law in dismissing the appeal taken by the appellant to the Secretary of Labor upon the ground and for the reason that the appellant's father's firm had too many partners for the amount of business transacted.

Second: That the Assistant Secretary of Labor acted arbitrarily and abused the discretion vested in him in refusing, for the reasons given in the Board of Review's Memorandum, to reopen the case of the appellant and consider the additional evidence offered.

Third: That the hearing accorded the appellant was unfair in this: that Inspector Nardini, who conducted the hearing at Los Angeles, was biased and prejudiced against appellant's father's firm, and that this bias and prejudice were reflected in the entire conduct of the Los Angeles hearing, and in the report filed by this Inspector, and prevented the appellant from having a fair and impartial hearing.

FIRST.

ERRONEOUS CONSTRUCTION OF THE LAW.

It is contended that the Assistant Secretary of Labor based his action upon an erroneous construction of the law in dismissing the appeal taken by the appellant to the Secretary of Labor upon the ground and for the reason that the appellant's father's firm had too many partners for the amount of business transacted.

We quote the Assistant Secretary's language found in his telegram previously referred to:

> "Answering telegrams Quan cases Department's investigation of mercantile firm at Los Angeles sole basis for decision and facts presented cannot be overcome by testimony (stop) Determining factors are large number of partners for a very small business. * * *" (Immigration Record, page 105.)

Note the words:—"cannot be overcome by testimony."

The District Court held that the consideration mentioned was not a good reason as a matter of law for dismissing the appeal. In overruling the demurrer to the petition and in granting the writ, it said:

> "The only thing decided by the Department upon the appeal herein, and the reason given for the exclusion, was the fact that the firm of which petitioner's father claimed to be a member had too many members for the amount of business transacted. But the law does not seem to make that the test. Lee Kan v. U. S., 62 Fed. 914." (Trans. page 14.)

In this connection we would refer to the quotation in *Lee Kan v. U. S.,* 62 Fed. 914, taken from the debates in Congress at the time the so-called "Geary Act", defining the term "Merchant" was under consideration, as follows:

> "This amendment requires every Chinaman asking to be admitted into the United States, and who claims to have formerly resided here, to prove that for at least one year, at some fixed place of business within the Union, he was engaged in buying and selling merchandise. We do not demand that he shall have a dollar's worth of stock, or a thousand dollars' worth; we simply follow the language of the treaty, and demand this protection to our own people."

It is submitted that the partners in a small Chinese mercantile concern are as much merchants and entitled to the classification and status as such as the partners in a large concern. The test under the statute is whether they are engaged in buying and selling merchandise at a fixed place of business,

and engage in no manual labor not necessary in the conduct of such business. 28 Stat, at L. 7 Chap. 14, U. S. Compl. Stat. 1901, p. 1322.

The considerations raised by Inspector Nardini, who conducted the hearing at Los Angeles, as to the size of the store room and the length of the counter (Immigration record, page 69) have nothing to do with the determination of mercantile status. Many large mercantile establishments have no counters at all and are conducted in small quarters.

Neither has the consideration that the appellant's father made more money as a cook than as a merchant anything to do with the determination of whether he is a merchant or not. (Immigration Record, page 97.)

It is submitted that the Immigration officers applied other tests than the test fixed by statute to determine whether the appellant's father is a merchant within the meaning of the law.

SECOND.

ABUSE OF DISCRETION AND ARBITRARY ACTION.

It is contended that the Assistant Secretary of Labor acted arbitrarily and abused the discretion vested in him in refusing, for the reasons given in the Board of Review's memorandum, to re-open the case of the appellant and consider the additional evidence offered.

The reasons given are found on pages 114 and 115 of the Immigration Record, and are quoted in full in the "Statement of the Case" in this brief. The additional evidence offered relates to the question of the mercantile status of the appellant's father and is outlined in an affidavit signed by several persons other than Chinese, and its substance (along with the substance of a similar affidavit presented in a similar case) is stated by the Board of Review in the following language:

> "The substance of both affidavits which are signed by a number of persons, is that the undersigned are citizens of the United States and residents of Los Angeles, California, not Chinese; that each is well acquainted with the Chinese merchants named at the tops of the respective affidavits, alleged fathers of the minor sons (son) respectively; that the said firm of which they are members has engaged in the buying and selling of goods in Los Angeles; that the said Chinese are merchants of the community and have performed no manual labor for the past two years except such as is necessary and required in the conduct of the business; that each affiant is informed that the Chinese merchants in question have lawful sons (son) applying for admission as the sons (son) of merchants, and that the purpose of the affidavit is to benefit the said Chinese as bona fide merchants of the city and state named." (Immigration Record, page 115.)

The reasons given for the refusal to grant the reopening and receive the evidence of the additional witnesses offered seem to counsel for the most part very trivial, to say the least.

One reason assigned is that the affidavit does not state that the affiants are willing to appear and testify. As the very object of the application was to have the case re-opened so that the additional witnesses could testify before the Immigration officers, this reason is certainly without merit and trivial.

Another reason assigned is that there is no statement in the affidavits as to the business of the affiants or as to their relations with the appellant's father, from which the department could conclude as to whether they were in a position to testify to his mercantile status. Such matters as these might properly, it is submitted, be covered in the oral examination or cross-examination by the Immigration officer which would follow the order of re-opening, and certainly are not necessary to be stated in the affidavit embodying the outline of the additional evidence offered, particularly where the affidavit states that the affiants are well acquainted with the appellant's father. It is submitted that this reason is also without merit and trivial.

Another reason assigned is that there is no statement in the affidavits as to why the witnesses were not introduced at the prior investigation and nothing to show that the testimony offered would not be cumulative to that already offered. When it is considered that the strict rules of legal procedure do not apply in immigration hearings, and the circumstance that it was considered that the testi-

mony of the witnesses theretofore introduced did not establish the applicant's father's mercantile status is borne in mind, it seems to counsel that this reason is also trivial. In the case of *Morrell v. Baker,* 270 Fed. 577, it was said:

> "Hearings before administrative bodies, like the Immigration authorities, are not subject to the rules governing judicial proceedings."

If in such proceedings the immigration authorities are not held to the strict rules of legal procedure, why should the alien seeking admission be? In a hearing before the Immigration officers where a Chinese person seeks admission, the hearing is held separate and apart from the public and without the presence of the alien's counsel, and the record in the case is not thrown open to the alien's counsel until the alien is denied admission by the port officials. Under such circumstances it would certainly seem unfair to hold the alien to the strict rules of judicial procedure in the submission of evidence. And after all, from the standpoint of common justice, would it not seem an abuse of discretion, where the witnesses submitted to prove mercantile status were held not credible or as not establishing the issue of mercantile status, to refuse to hear additional witnesses, who state in effect in their affidavit that they know the man in question to be a merchant, on the ground that such evidence would be cumulative?

It is submitted therefore that the reasons assigned for the refusal to hear the additional evidence offered constitute an abuse of discretion, and are in the nature of arbitrary action on the part of the administrative officer.

THIRD.

UNFAIR HEARING AND PREJUDICE.

It is contended that the hearing accorded the appellant was unfair in this: That Inspector Nardini, who conducted the hearing at Los Angeles was biased and prejudiced against appellant's father's firm, and that this bias and prejudice were reflected in the entire conduct of the Los Angeles hearing, and in the report filed by this Inspector, and prevented the appellant from having a fair and impartial hearing.

It must be borne in mind that in the cases of incoming aliens applying for admission, the hearings had are of an *ex parte* character, the alien's counsel not being permitted to be present at the hearing. Under these circumstances, the alien himself being unrepresented at the hearing, it is submitted that fairness and impartiality in the highest degree and a solicitude for the rights of the alien should characterize the proceedings. The alien being a foreigner, usually unacquainted with our language and amid surroundings likely to awe him, and the witnesses appearing for him being likewise usually

aliens, and standing more or less in awe of government officers, the utmost care should be taken to see that the testimony is fairly taken, and that fear and timidity do not interfere with getting the facts as they really exist in the record. A kindly attitude on the part of the government officers will do more to help in getting the real facts of the case clearly in the record than the most exhaustive examination and cross-examination, where the attitude of the officer conducting the same is hostile or severe. Too often the officer seems to regard himself as a prosecuting officer, and forgetting that he is to look out for the rights of the alien as well as those of the government, his official zeal runs away with his discretion and his fairness, and while perhaps not actually intimidating the witness appearing before him, his hostile attitude interferes with and prevents a correct disclosure of the facts. We cannot in this connection refrain from quoting the language of the learned judge in the case of *Lum Hoy Kee v. Johnson, Immigration Commissioner,* 281 Fed. 872:

> "As I have before observed, in cases tried in such a summary manner and under conditions so difficult for the applicant for admission as cases of this sort, a heavy burden is put upon the immigration tribunals to protect the rights of the applicant as well as those of the government."

It is submitted that the report of Inspector Nardini as a whole evidences an indefinable and in-

describable prejudice against the applicant's father and his firm, and a reading of the report is therefore requested. (Immigration Record, pages 67 to 73.)

Particular attention is called to the Inspector's minute description of the store of the firm in question and to the suspicion on the Inspector's part evidenced by his use of the following language therein:

> "Outside of the office there is a stairway leading to the balcony and second floor, where seven or eight beds were seen, and there were several escapes leading to the roof. In the rear there is a kitchen, and to the right of the kitchen is a large room facing on another street, containing eight or ten beds. An avenue of escape from the store is also afforded in connection with this room. While it is expected that lottery and other gambling operations are carried on there it has never been possible to establish this, but the place is an ideal one for an escape and detection in case of emergency."

Could an officer who "expects", utterly without evidence, *"that lottery and other gambling operations"* are carried on in the premises occupied by the firm, be regarded as a fair officer to investigate the mercantile firm, or to take the evidence touching on the right of a son of a member thereof to admission into this country?

Attention is called to Inspector Nardini's language found on page 68 of the Immigration Record

as evincing a hostile attitude toward the appellant's father's firm:

> "It seems that some air of mystery has pervaded this place ever since I have been in this city, and while applications of alleged members of the firm have invariably been approved, I am not satisfied that the partnership list is a bona fide one, * * *."

Was a man who had evidently been watching "this place" ever since he had been in Los Angeles, and who held the views that this Inspector evidently held regarding this firm, and regarding the correctness of the decisions of officers superior to him in the immigration service on applications of other partners in the firm for merchant's return certificates, a fair man to take the testimony in the appellant's case, and from a man holding such views could we not expect to find such a record as we find here?

Suspicion is not evidence, but evidently it has been accorded in the appellant's case before the Immigration Department the same weight as evidence.

The prolix and harassing method of examination pursued by the Los Angeles Inspector can only be judged by a perusal of the record of the testimony taken by him. Prolixity, it is submitted, in itself may not be necessarily evidence of unfairness, or may not necessarily constitute unfairness, but when carried to the extreme we find in this case, it does, we submit, annoy and harass witnesses, and when

it is attended with suspicion such as we find evidenced in the report of the inspector, and a general hostile attitude such as his report discloses, it does render the hearing unfair, as not coming up to that standard of absolute fairness which the law demands in a hearing of this character, where the counsel of the party in interest is not allowed to be present thereat or take part therein.

As an illustration of an harassing requirement made of the appellant's father during his examination we would quote the following extract from the record of the Los Angeles hearing:

> "Q. Are you prepared to furnish a Chinese partnership list in quintuplicate, and its translation in octuplicate?
> A. Yes." (Immigration Record, page 56.)

It is submitted that the immigration record shows that the Los Angeles hearing does not measure up to that standard of fairness which the law demands.

In conclusion it is respectfully submitted that the judgment of the District Court herein be reversed and the appellant discharged.

Dated, San Francisco,
February 11, 1924.

Respectfully submitted,

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LOUIS GOLDBERG,
Attorneys for Appellant.